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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,043	03/02/2004	Fung-Chao Tu	3098-166	9813

7590 04/29/2008  
TROXELL LAW OFFICE PLLC  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER
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VU, QUYNH-NHU HOANG

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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04/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/790,043	<b>Applicant(s)</b> TU, FUNG-CHAO	
	<b>Examiner</b> QUYNH-NHU H. VU	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8-18,22-36,38 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5-6, 8-18, 22-36, 38, 42-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

Amendment filed on 2/14/08 has been entered.

Claims 1, 5-6, 8-18, 22-36, 38, 42-45 are present for examination.

Claims 2-4, 7, 19-21, 37, 39-41 are cancelled.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-6, 8-9, 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa (US 2004/0153053) in view of Kieturakis (US 5,662,673) and Hart et al. (US 6,162,196).

Ishikawa discloses, Figs.1-8, a trocar assembly comprising: a sleeve 64; at least one airtight member 66 being disposed in the upper section; a trocar 50; a first fine elongated tunnel 52 being axially formed through the body section from top end to bottom end (see Fig. 2); the trocar 50 being fitted through the sleeve; an insufflations needle 42 which is a slender tube body fitted in the first elongated tunnel 52 of the trocar; an indicator needle 36 which is a slender rod body; wherein the indicator needle being fitted through the insufflations needle 42; a clamped section 54 or 64 is formed on outer circumference of the sleeve for holding.

Ishikawa does not disclose the bottom end of the body section being a spiraled conic thrust section; a second fine elongated tunnel formed through the body section of the trocar; and a trocar further comprising a probe.

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Kieturakis discloses that a trocar having a rod-shaped body section, and a bottom end of the body section being spiraled conic thrust section (Figs. 1-7).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Hart with a spiraled conic thrust section, as taught by Kieturakis, for the purpose of incising a pathway through a patient's abdominal wall or other body wall.

Hart discloses a second fine elongated tunnel 61 or 67 (Figs. 1, 6 or 10) formed through the body section; a probe has an indicating section.

And, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Ishikawa with a second tunnel, as taught by Hart, in order to accommodate a surgical instrument such as probe or guide-wire or catheter. It is well known in the art that the probe has an indicating section to guide the physician identify the location of surgical instrument.

Claims 10-11, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa (US 2004/0153053) in view of Kieturakis (US 5,662,673); Hart et al. (US 6,162,196) and further in view of Hueil (US 2005/0077689).

Ishikawa in view of Kieturakis and Hart disclose the invention substantially as claimed. Ishikawa in view of Kieturakis do not clearly show a latch notch formed at the opening of the upper section of the sleeve; a fixing member disposed on the top end of the body section.

Hueil discloses, Fig. 2, a latch notch 76 is formed at the opening of the upper section of the sleeve; at least one engaging body being formed at the top end of the body section of the trocar, whereby the engaging body can be engaged in the latch notch; a fixing member 64 (Fig. 5) or 88, 90 (Fig. 6) disposed on the top of the body section; a passage 230' (Fig. 21) or 242" is formed on outer circumference of the sleeve for communicating with the interior thereof.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Ishikawa in view of Kieturakis and Hart with a latch notch, a fixing

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member as taught by Hueil, in order to used for radial seal movement and to secure the housing of the device.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa (US 2004/0153053) in view of Kieturakis (US 5,662,673), Hart et al. (US 6,162,196) and further in view of Gresl et al. (US 5,397,335).

Ishikawa in view of Kieturakis and Hart disclose the invention substantially as claimed. Ishikawa in view of Kieturakis and Hart do not clearly show an insertion slit formed on top face of the body section of the trocar.

Gresl discloses, Figs. 1A, 2-3, an insertion slit 14, 15 is formed on top face of the body section of the trocar.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Ishikawa in view of Kieturakis and Hart with an insertion slit, as taught by Gresl, for the purpose of maintaining the engagement means within the tracks.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa (US 2004/0153053) in view of Kieturakis (US 5,662,673), Hart et al. (US 6,162,196) and further in view of Haberland et al. (US 7,153,319).

Ishikawa in view of Kieturakis and Hart disclose the invention substantially as claimed. Ishikawa in view of Kieturakis do not clearly show a rotary switch disposed on the top end of the trocar assembly.

Haberland discloses a passage 22 formed on outer circumference of the sleeve for communicating with the interior thereof; a rotary 60 (Figs. 1-2 or col. 5, lines 40-65).

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Ishikawa in view of Kieturakis and Hart with a rotary member, as taught by Haberland, in order to rotation, secures or unlocks, the respective mating portions of the device.

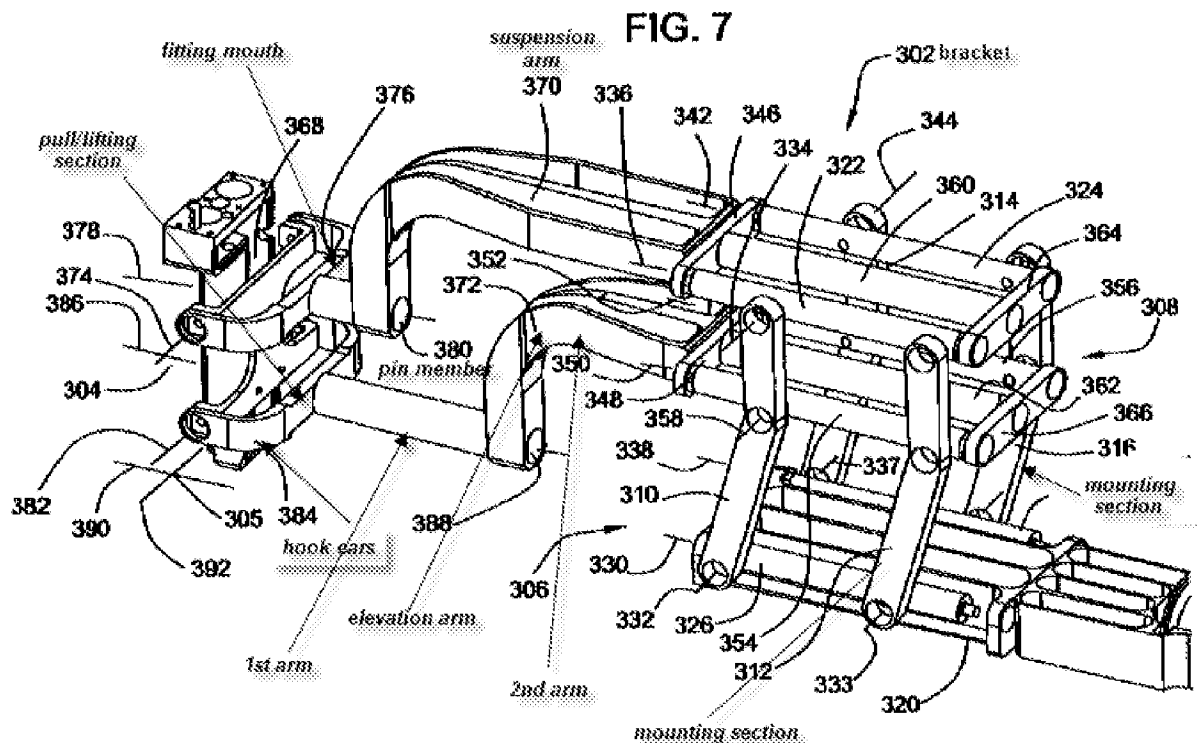
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Claims 24-36, 38, 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa (US 2004/0153053) in view of Kieturakis (US 5,662,673); Hart et al. (US 6,162,196) and further in view of Stuart (US 6,702,805).

Ishikawa in view of Kieturakis and Hart disclose the invention substantially as claimed (see rejection 1-23 above). Ishikawa in view of Kieturakis and Hart do not disclose a bracket co-used with a trocar assembly in claim 24.

Stuart discloses, Figs. 7-9, (see Fig below also), a tool holder (it can be used for hold trocar assembly) comprising: a bracket body 302, mounting section 312, 316, suspension arm 370, fitting mouth 376, elevation arm 372, hook ears 384.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Ishikawa in view of Kieturakis and Hart with a bracket member, as taught by Stuart in order to hold the equipment.



### ***Response to Arguments***

Applicant's arguments filed 2/14/08 have been fully considered but they are not persuasive.

Applicant argues that:

1. Ishikawa does not disclose the two tunnels, the indicator needle and probe.

In response, Examiner clearly point out these elements in above rejection.

2. Ishikawa in view of Kieturakis and Hart:

a. Secondary of Kieturakis has a spiral thrust section similar to that of the present invention.

However, the other parts of Kieturakis are different from the present invention.

b. Secondary of Hart discloses the implements that they are not used for safety judgment in thrust. Therefore, the object and structure of Hart et al. are different from those of the present invention.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

3. Stuart teaches a manipulator and is cited for teaching a tool holder. The operation equipment and the structure disclosed by Stuart different from the bracket of the present invention.

In response, the limitations of instant claims are fully disclosed and covered by the claims in the device of Stuart. (Please see above rejection). Therefore, The device of Stuart can be applied or co-used with a trocar assembly.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH-NHU H. VU whose telephone number is (571)272-3228. The examiner can normally be reached on 6:00 am to 3:00 pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763

Quynh-Nhu H. Vu  
Examiner  
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